

**Punca Klasik Sdn Bhd v Abdul Aziz
bin Abdul Hamid & Ors**

HIGH COURT (JOHOR BAHRU) — ORIGINATING MOTION NO 25–24 OF
1993

JAMES FOONG J
24 OCTOBER 1993

Land Law — *Restraints on dealings — Caveats — Interest in part of land — Whether private caveat may be lodged — National Land Code 1965 s 322(1)*

Land Law — *Restraints on dealings — Removal of caveats — Locus standi — Whether plaintiff an ‘aggrieved party’ within s 327(1) of the National Land Code 1965 — National Land Code 1965 s 327(1)*

Land Law — *Restraints on dealings — Removal of caveats — Estoppel — Whether plaintiff estopped from removing caveats as a result of prior knowledge of caveats*

Statutory Interpretation — *Construction of statutes — Literal approach — Whether court can give another meaning to statute where meaning of words clear and unequivocal — National Land Code 1965 s 322(1)*

Words and Phrases — *‘As the court may think just’*

The plaintiffs entered into a sale and purchase agreement with trustees of an estate to purchase a piece of property in Johor Bahru (‘the property’). When the sale came before the court for approval, it was ordered to be sold by tender to the highest bidder on such terms as laid down in the court order, one condition being that the property was to be sold without vacant possession and subject to all encumbrances, including caveats, interest, tenants and occupiers thereon. The plaintiffs were successful bidders and the property was sold to them. On the property were 20 caveats entered by the 20 defendants claiming to be beneficial owners of various parts of land of the property, having purchased the lands from the trustees or the beneficiaries of the estate long before the plaintiffs were successful in purchasing the property. The plaintiffs’ present application pursuant to s 327(1) of the National Land Code 1965 (‘the NLC’) seeks to remove these 20 caveats based on the proviso in s 322(1) of the NLC. The grounds raised in opposition by the defendants are: (i) the plaintiffs are not an ‘aggrieved party’ within s 327(1) of the NLC; (ii) by virtue of the plaintiffs’ knowledge of the defendants’ interest and caveats, the plaintiffs are estopped from removing them; (iii) by equitable principles the caveats should remain as the plaintiffs have no right to the defendants’ interest in their respective portions of the land which had been disposed to them earlier; (iv) s 322(1) should be given a wide interpretation in the interests of justice; and (v) the court still has the power under s 327(1) of the NLC to order the caveats to remain on grounds that it may think just.

- A Held**, allowing the plaintiffs' application:
- (1) The court categorically stated that it cannot give any interpretation to the proviso of s 322(1) of the NLC other than what is stated therein. There is no ambiguity in the wording of the proviso to s 322(1) of the NLC to call for any other interpretation. As the defendants own only a portion of the property, by law their caveats on the land could not be maintained.
 - B** (2) The plaintiffs are aggrieved because in law something wrongful has been done to them that affects their title to the property. Though they may have knowledge of the caveats earlier, it does not prevent them from being an aggrieved party in law.
 - C** (3) By the statutory provisions, these caveats could not be registered in the first place. It was not possible to estop an aggrieved party from removing the caveats even though they had prior knowledge of their existence, as the caveats themselves in law were invalid. The equitable principle of estoppel could not apply in the light of the clear provisions of the law as equity follows the law.
 - D** (4) The plaintiffs were purchasing the property under one document of title and are permitted under the NLC to be registered as proprietors. Although the defendants may have an interest in a portion of the said property, in law such interest cannot be protected by a caveat under s 322(1) of the NLC. Such being the case, the caveats should be removed. In removing the caveats, the court was not determining that the defendants had a lesser interest than the plaintiffs in certain portions of the property. The removal was based on the sole principle that the caveats alleged to be protecting a mere portion of land could not be registered under statutory law.
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 - F** (5) The court does not have powers to alter, vary or add on to any law as laid down by statute. Section 327(1) of the NLC read in conjunction with s 322(1) of the NLC is clear. An aggrieved person may apply to court to remove the caveats and the court shall make 'such order on the application as it may think just'. 'As it may think just' should be interpreted to mean as it may think just as stated in the law. The function of the court is not to rewrite statute and to give it another meaning when there is a clear and unequivocal provision in the enactment.
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[Bahasa Malaysia summary]

- H** Plaintiff telah mengikat satu perjanjian jualbeli dengan pemegang amanah satu harta pusaka untuk membeli sebidang hartanah di Johor Bahru ('hartanah itu'). Apabila jualan tersebut dikemukakan di hadapan mahkamah untuk kelulusan, ianya telah diperintahkan supaya dijual secara tender kepada penawar yang tertinggi atas terma yang diperuntukkan dalam perintah mahkamah, salah satu daripada syaratnya adalah bahawa hartanah itu dijual tanpa milikan kosong dan tertakluk kepada semua bebanan, termasuk kaveat, kepentingan, penyewa dan penghuni yang berada di atasnya. Plaintiff merupakan
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penawar yang berjaya dan hartanah itu telah dijual kepada mereka. Atas hartanah itu wujud 20 kaveat yang telah dimasukkan oleh 20 defendan yang menuntut sebagai tuan punya benefisial beberapa bahagian hartanah itu, kerana telah membeli bahagian berasingan hartanah itu daripada pemegang amanah harta pusaka atau daripada benefisiari harta pusaka lama sebelum plaintif berjaya membeli hartanah itu. Permohonan plaintif ini di bawah s 327(1) Kanun Tanah Negara 1965 ('KTN') memohon untuk membatalkan 20 kaveat itu di bawah proviso kepada s 322(1) KTN. Alasan membangkang yang dibangkitkan oleh defendan adalah: (i) plaintif bukanlah 'pihak terkilan' mengikut maksud s 327(1) KTN; (ii) disebabkan pengetahuan plaintif mengenai kepentingan dan kaveat defendan, plaintif diestop daripada membatalkan mereka; (iii) berpandukan prinsip ekuiti, kaveat itu patut dibiarkan kerana plaintif tidak mempunyai sebarang hak untuk memiliki kepentingan defendan dalam bahagian tanah mereka masing-masing yang telah dijual kepada mereka terlebih dahulu; (iv) s 322(1) patut diberikan suatu takrif yang lebih luas demi kepentingan keadilan; dan (v) mahkamah masih mempunyai kuasa di bawah s 327(1) KTN untuk memerintahkan supaya kaveat dibiarkan atas alasan sepertimana yang difikirkan adil.

Diputuskan, membenarkan permohonan plaintif:

- (1) Mahkamah secara mutlak menyatakan bahawa ia tidak dapat memberikan takrif yang lain kepada proviso kepada s 322(1) KTN selain daripada yang dinyatakan di dalamnya. Tidak ada sebarang ketaksaan dalam perkataan dalam proviso kepada s 322(1) KTN untuk menimbulkan sebarang penakrifan yang lain. Oleh kerana defendan hanya memiliki sebahagian daripada hartanah itu, di bawah undang-undang, kaveat mereka atas hartanah itu tidak boleh dikekalkan.
- (2) Plaintif terkilan kerana di sisi undang-undang sesuatu yang salah telah dilakukan terhadap mereka dan ini mempunyai kesan ke atas hakmilik mereka dalam hartanah itu. Walaupun mereka mungkin mempunyai pengetahuan mengenai kaveat terlebih dahulu, ini tidak menghalang mereka daripada menjadi satu pihak terkilan di sisi undang-undang.
- (3) Mengikut peruntukan statutori, kaveat itu tidak boleh didaftarkan sama sekali. Adalah tidak mungkin untuk mengestop suatu pihak terkilan daripada membatalkan kaveat itu walaupun mereka mempunyai pengetahuan terlebih dahulu mengenai kewujudan itu, kerana kaveat itu sendiri adalah tidak sah di sisi undang-undang. Prinsip ekuiti estoppel tidak terpakai memandangkan peruntukan undang-undang yang jelas bahawa ekuiti mengikut undang-undang.
- (4) Plaintif telah membeli hartanah itu di bawah suatu dokumen hakmilik dan dibenarkan di bawah KTN untuk didaftarkan sebagai tuan punya hartanah itu. Walaupun defendan mungkin mempunyai suatu kepentingan dalam sebahagian hartanah itu, di sisi undang-

- A undang, kepentingan sedemikian tidak boleh dilindungi oleh suatu kaveat di bawah s 322(1) KTN. Memandangkan kes sedemikian, kaveat itu sepatutnya dibatalkan. Dengan pembatalan kaveat itu, mahkamah bukan menentukan bahawa defendan mempunyai satu kepentingan yang kurang penting daripada kepentingan plaintif dalam bahagian tertentu hartanah itu. Pembatalan kaveat itu berdasarkan prinsip tunggal bahawa kaveat itu yang dikatakan melindungi sebahagian tanah tidak boleh didaftarkan di bawah undang-undang statutori.
- B (5) Mahkamah tidak mempunyai kuasa untuk menukar, mengubah atau menambah kepada sebarang undang-undang yang ditetapkan oleh statut. Seksyen 327(1) KTN dibaca bersama s 322(1) KTN adalah jelas. Suatu pihak terkilan boleh memohon kepada mahkamah untuk membatalkan kaveat itu dan mahkamah mesti membuat 'perintah sewajarnya atas permohonan sepertimana yang ia fikirkan adil' ('such order on the application as it may think just'). 'Sepertimana ia fikirkan adil' ('as it may think just') patut ditafsirkan untuk bermakna sepertimana yang ia fikirkan adil sebagaimana yang dinyatakan dalam undang-undang. Fungsi mahkamah ini bukan untuk menulis semula statut dan memberinya suatu makna yang berlainan apabila terdapat satu peruntukan yang jelas dan nyata dalam enakmen itu.]
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[*Editorial Note*: The tenth defendant has appealed to the Supreme Court vide Civil Appeal No 02-623-93.]

Notes

- F For cases on restraints on dealings, see 8 *Mallal's Digest* (4th Ed) paras 1687-1779.
For cases on construction of statutes, see 11 *Mallal's Digest* (4th Ed) paras 1319-1327.

Cases referred to

- G 1 *Dato Ong Kian Seng v Lim Kut Sheong* [1992] 1 CLJ 409 (refd)
2 *Tan Heng Poh v Tan Boon Thong & Ors* [1992] 2 MLJ 1 (folld)
3 *Mosbert Bhd (In liquidation) v Stella D'Cruz* [1985] 2 MLJ 446 (refd)
4 *Chng Sin Poey & Sons Sdn Bhd v Quek Lian Meng* [1979] 1 MLJ 98 (not folld)
- H 5 *N Vangedaselam v Mahadevan & Anor* [1976] 2 MLJ 161 (not folld)
6 *Ex p Sidebotham* (1880) 14 Ch D 458 (refd)

Legislation referred to

National Land Code 1965, ss 322(1), 327(1)

- I *Wong Kim Fatt* (*KH Koh* and *Saw Hee Kin* with him) (*KH Koh Azhar & Koh*) for the plaintiffs.
Thara Singh (*Kushvinder Singh* with him) (*Thara Singh Sidhu*) for the first, fourth, fifth, eighth and thirteenth defendants.

M Nathan (L Pereira & Associates) for the second, ninth and eighteenth defendants. A

Reginald Vallipuram (Reginald Vallipuram & Co) for the third defendant.

Awatar Singh (Awatar Singh & Co) for the sixth defendant.

SL Song (SK Song) for the seventh defendant.

A Kadir (Syed Ibrahim & Co) for the tenth defendant.

Chandra Sekran (Abdullah & Zainudin) for the twelfth defendant. B

Harcharan Kaur (Lim, Han & Teoh) for the sixteenth defendant.

Ibrahim Hashim (Hassan Ibrahim & Co) for the nineteenth defendant.

NK Sandhu (R Gita with her) (NK Sandhu & Co) for the twentieth defendant. C

James Foong J: The facts of this case are not disputed. They are as follows. On 9 July 1991, the plaintiffs entered into a sale and purchase agreement with the trustees of the estate of one Syed Hassan bin Ahmad Alattas (hereinafter I shall refer to as 'the Alattas Estate'), to purchase a piece of property held under Grant No 26977 for Lot 4271 in the township of Johor Bahru (hereinafter I shall refer to as 'the said property') which measures approximately about 24 acres. D

When this sale came before this court for approval, this court ordered that it should be sold by tender to the highest bidder on the terms as laid down in a court order dated 29 February 1992. One of the conditions for this sale was that the said property be sold without vacant possession and subject to all encumbrances which include caveats, interest, tenants and occupiers thereon. E

The plaintiffs were the successful bidders and the property was sold to them for a sum of approximately RM24m.

On the said property are 20 caveats entered by the 20 defendants in this motion. Their claims are virtually similar; that they are the beneficial owners of various parts of land in the said property which can be identified, measuring from approximately 650–20,000sq ft. These they claimed were purchased from the trustees or beneficiaries of the Alattas Estate long before the plaintiffs were successful in purchasing the said property. F

The plaintiffs' application by way of this motion is to remove these 20 caveats of the defendants. Their argument is mainly based on the proviso to s 322(1) of the National Land Code 1965 ('the NLC') which is amended to read as follows: G

Provided that such a caveat shall not be capable of being entered in respect of a part of the land. H

As the defendants are only holding interests in parts of the said property, by this statutory provision they have no legal right to enter caveats on the said property. In support of their contention, the cases of *Dato Ong Kian Seng v Lim Kut Sheong*,¹ *Tan Heng Poh v Tan Boon Thong & Ors*² and *Mosbert Bhd (In liquidation) v Stella D'Cruz*³ were cited in support. I

Counsel for the represented defendants after respective submissions, seem to adopt the following grounds to oppose this application of the plaintiffs.

- A Firstly, the defendants contended that the plaintiffs are not an 'aggrieved party' falling within the provision of s 327(1) of the NLC. When the plaintiffs purchased the said property, they were aware of the existence of the defendants' interests and their caveats. The plaintiffs even agreed to purchase the said property subject to existing caveats. This is evidenced from the sale and purchase agreement between the plaintiffs and the trustees of the Alattas Estate and the court order dated 29 February 1992.

B Secondly, by virtue of the plaintiffs' knowledge of the defendants' interests and caveats, the plaintiffs are estopped from removing them.

- C Thirdly, by equitable principles, these caveats should remain as the plaintiffs have no right to the defendants' interests in their respective portions of land since these portions had earlier being disposed of by the trustees of the Alattas Estate or those claiming under them.

Fourthly, s 322(1) of the NLC should be given a wide interpretation in the interest of justice and that the Supreme Court case of *Tan Heng Poh v Tan Boon Thong*² should be distinguished.

- D Finally, the defendants submitted that this court still has the power under s 327(1) of the NLC to order the caveats to remain on grounds that it may think just following the decision of Syed Othman J in *Chng Sin Poey & Sons Sdn Bhd v Quek Lian Meng*.⁴

- E The National Land Code (Amendment) Act 1984 which came into effect on 25 March 1985 has altered the law relating to caveats after the case of *N Vangedaselam v Mahadevan & Anor*.⁵ The new proviso to s 322(1) of the NLC specifically provides that no caveats shall be capable of being entered in respect of a part of the land. In the Supreme Court decision of *Tan Heng Poh v Tan Boon Thong*,² it is clearly explained that 'a person who is interested only in a specific portion of land cannot enter a caveat against the land'. This is the position of the law as it is today.

F From the submissions of the defendants, it is their intention to overcome the above provision of the law.

- G At the outset, this court can categorically state that it cannot give any other interpretation to the proviso of s 322(1) of the NLC other than what is stated therein. As stated in the judgment of Mohamed Azmi SCJ in *Tan Heng Poh's* case,² 'Any other interpretation would appear to make it meaningless, and inconsistent with the Torrens System of giving certainty and indefeasibility to registration of land title, save for fraud or misrepresentation in the transfer or registration itself'. In any event there is no ambiguity in the wordings of the proviso to s 322(1) of the NLC to call for any other interpretation. As confirmed by the judgment in *Tan Heng Poh's* case,² of which this court is bound by law to follow, 'For the purpose of entry and registration, a private caveat should bind the whole alienated land or the whole registrable interest in the said land. If a person claimed only a limited title or interest in the alienated land, then his caveatable claim would be caught by the new proviso to s 322(1).'

I In this case, it is an undeniable fact that the defendants are all owning only a portion of the land and by law their caveats on the land cannot be maintained.

Now I shall move on to the contention by the defendants that the plaintiffs are not an 'aggrieved party' under s 327(1) of the NLC. 'Aggrieved party' is not defined in the NLC. However, in the case of *Ex p Sidebotham*,⁶ it was accepted that, 'A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something'. The plaintiffs could be aware of the defendants' interest on the said property and even the existence of the caveats but, one cannot deprive the plaintiffs of their legal capacity of being an aggrieved party. The plaintiffs are aggrieved because in law something wrongful has been done to them that affects their title to the property. Though they may have had knowledge of the caveats earlier, it does not prevent them from being an aggrieved party in law.

Following from the above, this court shall now deal with the issue of estoppel raised by the defendants. The defendants alleged that since the plaintiffs were aware of the defendants' interest and caveats on the said property and had even covenanted to buy with these encumbrances, the plaintiffs should be estopped from removing the said caveats. This to my mind is a wrong conception. By statutory provisions, these caveats cannot be registered in the first place. They are against the provisions of the NLC. It is not possible to estop an aggrieved party from removing these caveats even though they have knowledge of their existence before, when the subject matter (the caveats) itself is in law invalid. The equitable principle of estoppel cannot apply in the light of clear provisions of the law: equity follows the law.

The next issue raised by the defendants is that the defendants have purchased their respective portions on the said property earlier than the plaintiffs. This being the case and coupled with the fact that the plaintiffs were aware of the defendants' interest on the said land, the plaintiffs have no legal right to the defendants' portion and as such their caveats have a right to remain. The issue before this court is not that of competing priorities. The issue before this court is whether in law the caveats of the defendants should be removed. Whether the defendants' rights or interests in the said property are recognized by the plaintiffs is a separate matter altogether which, at this stage, this court is not asked to determine. When the plaintiffs entered into an agreement to purchase the said property from the Alattas Estate and were successful bidders in the tender, they were purchasing a piece of property held under Grant No 26977 for Lot 4271 in the township of Johor Bahru. As they were purchasing this property contained in one document of title, they are, as permitted under the NLC, to be registered as proprietors. The defendants may have an interest in a portion of the said property but in law such interest cannot be protected by a caveat under s 322(1) of the NLC. Such being the case, these caveats should be removed. In removing these caveats this court is not determining that the plaintiffs have a lesser interest than the defendants in the certain portions of the said property. The removal of these caveats is based on the sole principle that these caveats alleged to be protecting a mere portion of land cannot be registered under statutory law.

- A This court has been informed by the defendants that they are prepared to consent to the said property being transferred to the plaintiffs subject to these caveats. As this court has stated earlier, the issue before this court is for the removal of the caveats. Even if the said property is being transferred to the plaintiffs subject to these caveats, the issue still remains as to whether these caveats can be there in the first place. One cannot prevent the
- B plaintiffs from making their application for removal at any time. As they have chosen to make such application now, this court shall have to make necessary orders accordingly.

- Regret to say, this court does not have such powers to alter, vary or add on to any law as laid down by statute. Section 327(1) of the NLC read in
- C conjunction with s 322(1) of the NLC is clear. An aggrieved person may apply to this court to remove these caveats and this court shall make 'such order on the application as it may think just'. 'As it may think just' should be interpreted to mean as it may think just as stated in the law. In this case, the law under s 322(1) of the NLC does not permit the defendants' caveats to be registered. As such this court can make no other order except as it is
- D laid down in the law. The function of this court is not to rewrite statute and to give it another meaning when there is a clear and unequivocal provision in the enactment. However harsh the result may be, the court of law has to follow what is enacted by Parliament. In this case, the provision in an enactment of Parliament under s 322(1) of the NLC is clear and
- E unambiguous and this court has to make an order for the removal of the defendants' caveats under s 327 of the NLC.

Application allowed.

Reported by Premala Pathmanathan

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